

Fiscal Services Division

Legislative Services Agency

Fiscal Note

SF 2350 – Probate Omnibus (LSB 5222 SV)

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Fiscal Note Version – New

Description

Senate File 2350 relates to trusts and estates, including the administration of small estates. The Bill also includes retroactive and other applicability provisions. Sections 17 through 23 reorganize and restructure current provisions in the trust code relating to creditors' rights, spendthrift trusts, spendthrift trusts for the benefit of the settlor, overdue distributions, and creates new provisions relating to creditors' rights and discretionary trusts. According to the Department of Human Services, these sections may affect the Medicaid program and the ability to make recoveries under the Estate Recovery program.

Background

- A discretionary trust is a trust where the beneficiaries and/or their entitlements to the trust fund are not fixed, but are determined by criteria set out in the trust instrument by the settlor. Discretionary trusts relate to the discretionary distribution of income, but in some cases the trustees will also have a power of appointment with respect to capital assets.
- A spendthrift trust is a trust that is created for the benefit of a person (often because he or she is unable to control spending) that give an independent trustee full authority to make decisions as to how the trust funds may be spent for the benefit of the beneficiary. Creditors of the beneficiary generally cannot reach the funds in the trust, and the funds are not actually under the control of the beneficiary. Spendthrift provisions typically do not apply to Medicaid because Medicaid is a necessary expenditure.
- The Iowa Supreme Court in *Estate of Barkema* 690 N.W. 2d 50 (Iowa 2004) stated that the Department of Human Services can obtain recovery from discretionary support trusts.
- 42 United States Code (USC) 1396p (Liens, Adjustments, and Recoveries, and Transfers of Assets) allows States to access and use interests in trusts to repay medical assistance debt.
- Based on current Estate Recovery Program experience for FY 2008, the State is currently in litigation with three discretionary support trusts, three cases are pending, and two additional cases are anticipated before the close of the fiscal year.
- The length of time to complete Estate Recovery proceedings with discretionary trusts varies from case to case, but if litigation is involved, the case can cross multiple fiscal years.

Assumptions

- Sections 17 through 23 of the Bill do not limit the application to just spendthrift trusts. This results in the limitation of the creditor's recoveries from trusts, possibly including Medicaid. This could limit the Medicaid Program's ability to perform estate recovery functions.
- Assumes the impact is a range of one to eight discretionary support trusts per year at an average recovery of \$80,000 to \$100,000 per trust.
- The federal participation rate for Medicaid is 62.40% FY 2009 and 62.85% for FY 2010.
- Senate File 2350 may result in lost Medicaid dollars for both the State and federal government.

Fiscal Impact

The estimated fiscal impact of SF 2350 ranges from \$34,000 to \$271,000 in lost Medicaid revenue for the State in FY 2009 and from \$33,000 to \$267,000 in lost Medicaid revenue for the State in FY 2010.

	FY 2009		FY 2010	
	One Trust	Eight Trusts	One Trust	Eight Trusts
Federal Share	\$ 56,160	\$ 449,280	\$ 56,565	\$ 452,520
State Share	33,840	270,720	33,435	267,480
Total	<u>\$ 90,000</u>	<u>\$ 720,000</u>	<u>\$ 90,000</u>	<u>\$ 720,000</u>

Sources

Department of Human Services

/s/ Holly M. Lyons

March 17, 2008

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.
